

**Response to Written Comments  
and  
Staff Initiated Changes**

**Resolution No. R1-2020-0013  
Authorizing Referral of Water Code Violations  
by Shadow Light Ranch, LLC, Joshua Sweet, and The Hills, LLC  
to the Office of the Attorney General  
for Judicial Civil Enforcement**

**Regional Water Quality Control Board, North Coast Region  
June 18, 2020**

**Comment Letter Received**

The deadline for submission of public comments regarding draft Resolution No. R1-2020-0013 (Resolution) for authorizing the referral of certain Water Code violations by Shadow Light Ranch, LLC, Joshua Sweet, and The Hills, LLC (collectively, Responsible Parties) to the Office of the Attorney General for judicial civil enforcement was February 11, 2020. The Responsible Parties provided comments via email which are shown in italics and are followed by the North Coast Regional Water Quality Control Board (Regional Water Board) staff (Staff) response. The term “Proposed Resolution” refers to the version of the Resolution that has been modified in response to comments and is being presented to the Regional Water Board for consideration. Also, the entire comment letter is included in the agenda package for the Regional Water Board.

***Comment 1: page 1, paragraph 2***

*At the outset, SLR [Shadow Light Ranch, LLC, Joshua Sweet, and The Hills, LLC, referred to as Responsible Parties in Staff responses] seeks to reiterate what it has shared previously with Regional Water Board and State Water Resources Control Board (“State Water Board”) staffs involved in the cannabis cultivation programs - that SLR has strived in good faith to comply with its obligations under Regional Water Board Order No. R1-2015-0023 (“Regional Water Board Cannabis Order”) and State Water Board Order WQ 2019-0001-DWQ (“State Water Board Cannabis Order”), and other environmental requirements. Environmental stewardship is important to SLR, and significant effort was, and continues to be, expended to identify appropriate methods of authorized cannabis development, in order to minimize impacts on natural resources.*

**Response 1:** Staff disagrees that the Responsible Parties “strived in good faith to comply with its obligations” under the Regional Water Board Order. Since June 2018, the Responsible Parties (and associated consultants) were put on notice of violations at the Site (as that term is defined in the Resolution), but they have failed to correct such violations, and they did not request clarification or communicate with the Regional Water Board specifically about such violations. The Responsible Parties have failed to furnish the technical documents identified in a Notice of Violation (NOV) dated June 27, 2018, until 593 days following the deadline specified within the NOV, nor during that time did the Responsible Parties or consultants reach out to the Regional Water Board

regarding the requests within the NOV, despite the NOV including contact information for Staff in case the Responsible Parties had questions.

Additionally, the Responsible Parties have not applied for a Clean Water Act section 401 water quality certification or analogous waste discharge requirements (401/WQC) for proposed instream work as documented in Lake or Streambed Alteration Agreement (LSAA) notifications currently on file with the California Department of Fish and Wildlife (CDFW). Similarly, the Responsible Parties did not apply for a 401/WQC prior to beginning instream work in the summer of 2016 while enrolled under the Regional Water Board Cannabis Order and described further in the Proposed Resolution and Staff Report (these instream features were originally documented in the 2017 Inspection Report and 2018 Inspection Report prepared by the assigned Staff and transmitted to the Responsible Parties on June 27, 2018).

The State Water Board Cannabis General Order has been available for enrollment since October 2017, however, the Responsible Parties did not apply for coverage under that Order until May 8, 2019, instead choosing to cultivate cannabis while remaining liable for meeting the requirements of the Regional Water Board Cannabis Order. Since applying for enrollment under the State Water Board Cannabis Order, the Responsible Parties have continued their pattern of non-compliance, failed to submit the required technical reports within 90 -days of applying for coverage under the State Water Board Cannabis Order. On February 10, 2020, Timberland Resource Consultants (TRC) submitted the required technical reports 188 days past the 90-day deadline contained in the State Water Board Cannabis General Order (Section B.2.c).

The Responsible Parties have not made adequate progress to resolve ongoing violations and discharges occurring at the Site nor have the Responsible Parties communicated adequately with the Regional Water Board to resolve or clarify any violations, permitting requirements, or remediation of impacts to waters of the state. Therefore, the Responsible Parties and Property Site have been and continue to be out of compliance and in violation of the Regional Water Board Cannabis Order, the State Water Board Cannabis Order, and Water Code. For these reasons, the Responsible Parties' statement that they "strived in good faith to comply with [their] obligations" under the applicable orders appears to be inconsistent with the facts.

***Comment 2: page 1, paragraph 3***

*Nonetheless, SLR would be remiss not to at least briefly note that SLR's efforts to implement and comply with all of its obligations under the State's cannabis cultivation programs has been complicated due, in part, to conflicting information under those programs, especially during SLR's transition from the Regional Water Board's Cannabis Order to the State Water Board's Cannabis Order.*

**Response 2:** Staff disagrees that the requirements are conflicting or were too confusing to result in compliance. Staff provided a tremendous amount of outreach and assistance to those applicants that attended the multiple education events or contacted the Regional Water Board through our well-publicized contact information. Thousands of

applicants successfully transferred enrollment from the Regional Water Board Order to the State Water Board Order, resulting in their compliance with both Orders. At all relevant times, the Responsible Parties had contact information for Staff to raise any questions regarding perceived “conflicting information.” The Responsible Parties chose not to discuss those issues with Staff.

See Response 2a and Response 2b for additional Staff responses to “conflicting information” identified in Comment 2.

**Comment 2a:** page 1-2, paragraph 4

*For example, with respect to the cultivation area discussed in the Proposed Resolution, while Section B of the Proposed Resolution alleges a discrepancy in the total cultivation area at the SLR property, SLR notes herein somewhat unclear and potentially conflicting definitions that may have contributed to good faith confusion amongst the parties. The Regional Water Board’s Cannabis Order defines cultivation area as “[t]he sum of the area(s) of cannabis cultivation and/ or operations with similar environmental effects as measured around the perimeter of each discrete cultivation area on a single parcel of land,” which might be interpreted more broadly, while the State Water Board’s Cannabis Order and Cannabis Cultivation Policy measures cultivation area more narrowly, for in-ground plants “by the perimeter of the area planted, including any immediately adjacent surrounding access pathways.” Further, Humboldt County Ordinance No. 2559, the Commercial Medical Marijuana Land Use Ordinance, defines the cultivation area similar to the State Water Board as “the sum of the area(s) of cannabis cultivation as measured around the perimeter of each discrete area of cannabis cultivation on a single premises . . . Area of cannabis cultivation is the physical space where cannabis is grown . . . [and] shall include the maximum anticipated extent of all vegetative growth of cannabis plants to be grown on the premises.” Given the potentially conflicting standards, and the fact that SLR’s cultivation permits specify 53,700 square feet of cultivation area, SLR believed it was making good faith efforts to accurately define and report the cultivation area on the SLR property for purpose of water quality permitting.*

**Response 2a:** Staff disagrees that the Responsible Parties made “good faith efforts to accurately define and report the cultivation area.” The Regional Water Board Cannabis Order governed the Responsible Parties’ obligations so long as they were enrolled under such order, and the Responsible Parties do not claim that they did not understand such requirements. Indeed, the Responsible Parties are sophisticated, and their comment letter demonstrates fluency with the requirements of the orders as well as County requirements. Additionally, Regional Water Board and State Water Board staff conducted many outreach and education events to provide compliance assistance to enrollees. Staff advertised contact information for the cannabis program generally as well as for the Responsible Parties’ Site specifically. There were many opportunities to seek assistance, if the Responsible Parties had questions. The Responsible Parties chose not to do so.

Although other permitting agencies and permits have alternate requirements or metrics for the measurement and reporting of cultivation, the Responsible Parties knew (or should have known) of the measurement and metrics as stated in the Regional Water Board Cannabis Order.

**Comment 2b:** page 2, paragraph 5

*Similarly, although a Water Resource Protection Plan (“WRPP”) is required under the Regional Water Board’s Cannabis Order (see Proposed Resolution at § G), SLR and its consultants were informed by the State Water Board at public workshops prior to adoption of the State Water Board’s Cannabis Order, that the WRPP would be obsolete and to instead transition to the Site Management Plan (“SMP”) required under that Order. Accordingly, SLR retained Timberland Resource Consultants (“TRC”) to help SLR enroll under the State Water Board’s Cannabis Order, and to draft the SMP. SLR has now submitted its SMP to the State Water Board. (See Proposed Resolution at § H.)*

**Response 2b:** Staff disagrees that the Responsible Parties were given information that superseded the requirement to submit an updated WRPP as stated in the June 27, 2018 NOV. The Regional Cannabis Order requires enrollees with a Tier 2 designation (the Site has been enrolled as Tier 2 since 2016) to develop and implement a WRPP, and produce the WRPP upon request by Staff (Section I.B). During Staff’s Site inspection on November 2, 2017, the Responsible Parties could not produce a WRPP. Instead, the Responsible Parties submitted a deficient WRPP on December 14, 2017. In the NOV, transmitted June 27, 2018, Staff requested an updated WRPP be submitted within 30-days (i.e., July 27, 2018). The Responsible Parties did not comply until February 10, 2020, 593 days following the 30-day deadline identified in the NOV, during which time neither the Responsible Parties nor associated consultants contacted Staff to discuss the submittal of an updated WRPP or comparable document (such as an SMP). The Responsible Parties did not apply for coverage under the State Water Board Cannabis General Order until May 8, 2019, and they were therefore subject to the requirements of the Regional Water Board Cannabis Order until that date, including the 315 days between the issuance of the NOV and the Responsible Parties’ application for coverage under the State Water Board Cannabis Order (June 27, 2018 through May 8, 2019).

As to the assertion that a WRPP would be obsolete under the State Water Board Cannabis Order, the Responsible Parties’ current consultants, TRC, were well aware that the Regional Water Board has accepted and continues to accept WRPPs with attached cover letters updating that document in lieu of the technical documents identified in the State Water Board Cannabis Order, including SMPs, Nitrogen Management Plans, Disturbed Area Stabilization Plans, and Site Erosion Sediment Control Plans (as stated in emails from TRC dated July 23, 2018 and October 14, 2019, and during an in person meeting with TRC management on May 3, 2019). Staff communicated with as many local consultants, including TRC, as possible following adoption of the State Water Board Cannabis Order in October 2017, that an amended WRPP could be submitted to meet the technical requirements of that Order.

The Responsible Parties and associated consultants did not submit the technical documents required by the State Water Board Cannabis Order (including an SMP) until February 10, 2020, 188 days past the 90-day deadline (August 6, 2019) for the submittal of technical documents following the application for coverage under that Order (submitted May 8, 2019).

Staff will update the Draft Resolution and Staff Report to acknowledge the tardy submittal of the SMP (which includes a Disturbed Area Stabilization Plan and Nitrogen Management Plan) submitted on February 10, 2020, 188 days late and past the 90-day deadline (August 6, 2019) for the submittal of technical documents following the application for coverage under that Order (submitted May 8, 2019), and 593 days late and past the deadline (July 27, 2018) to submit a revised WRPP within 30 days, as required by the June 27, 2018 NOV.

**Comment 3:** page 2, paragraph 6

*SLR remains fully committed to complying with the State's cannabis cultivation programs, and to engage in any additional site work necessary for that purpose. To that end, SLR and its consultants have been working with staffs of the Regional Water Board, the California Department of Fish & Wildlife ("CDFW"), and Humboldt County (for CEQA coverage) to complete remaining work to ensure the site is compliant (some of that work is described in the Proposed Resolution at § C). On January 16, 2020, SLR executed a revised Draft Lake or Streambed Alteration Agreement ("LSAA") prepared by CDFW; SLR expects a final LSAA once the CEQA process concludes this Spring. SLR will ensure any other authorizations that may be needed for the work described in the LSAA are obtained, and will then commence the work desired and previously discussed with the relevant agencies. With this forward progress and momentum in mind, SLR is demonstrating commitment to environmental compliance.*

**Response 3:** Staff disagrees that the Responsible Parties have demonstrated a commitment to complying with Regional Water Board and State Water Board requirements. In conjunction with the violations discussed above, the Responsible Parties have failed to apply for coverage under the General Water Quality Certification for instream work as required by the State Water Board Order.

Specifically, the Responsible Parties have failed to submit a 401/WQC for the instream work proposed in the current draft LSAA, dated December 20, 2019 and obtained through CDFW, or within the SMP submitted to the Regional Water Board on February 10, 2020. Neither the Responsible Parties nor associated consultants have contacted the Regional Water Board to discuss the proposed instream work requiring a 401/WQC, including but not limited to replacement, installation, or removal of stream crossings, changes to infrastructure associated with onstream ponds or ponds that discharge to waters of the state, including work within a wetland. Neither the current draft LSAA nor SMP include a meaningful plan to restore the wetlands currently impacted by the Upper Pond or a sufficient plan to stabilize the Lower Pond (as described in the Proposed Resolution and Staff Report).